

The Additional Powers Request (Scotland) Regulations 2019 – Guidance for Relevant Local Authorities

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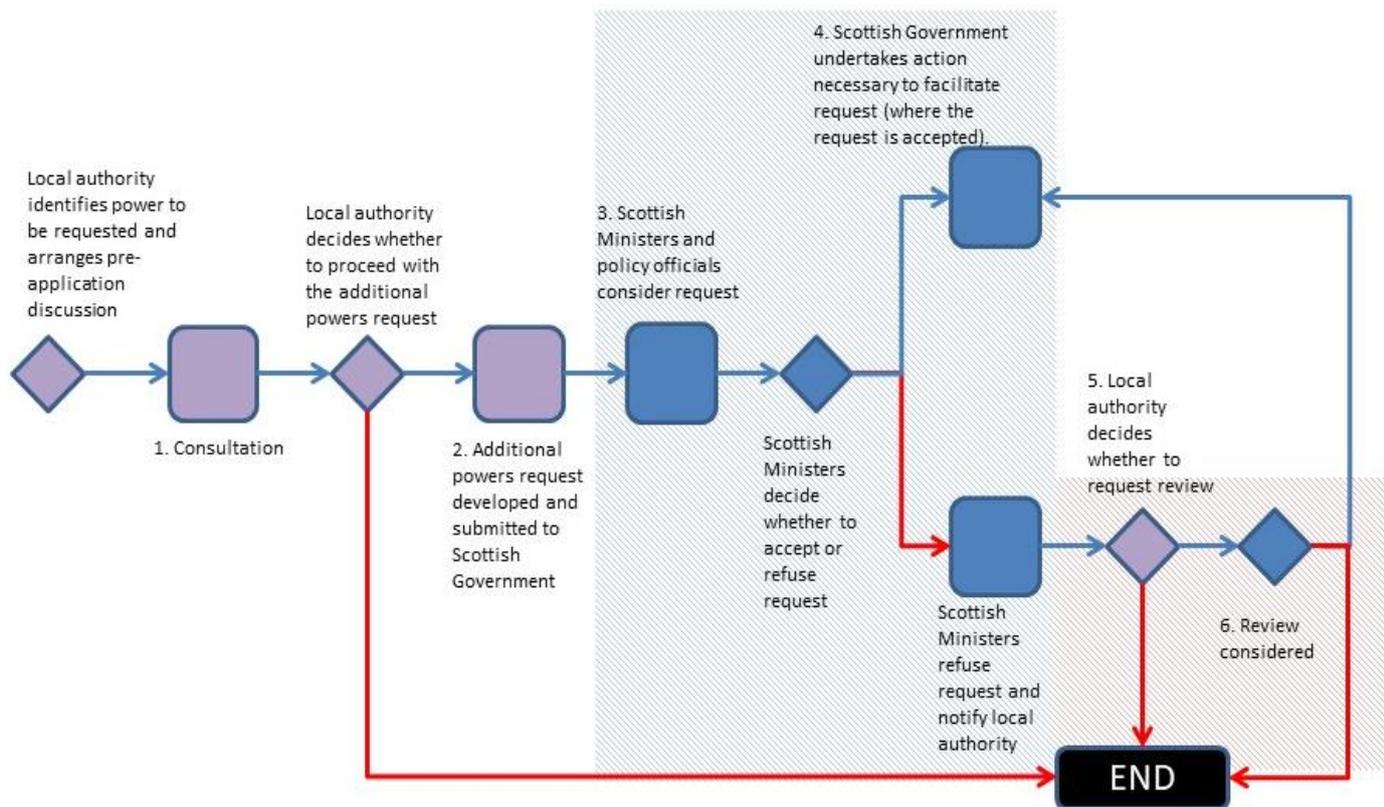
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1. Introduction

- 1.1 This Guidance is intended to provide guidance for the relevant local authorities with regard to making an additional powers request to the Scottish Ministers under the Additional Powers Request (Scotland) Regulations 2019 (**“the Regulations”**).
- 1.2 The Regulations are made in exercise of the powers conferred by sections 15 and 21 of the Islands (Scotland) Act 2018 (**“the Act”**). The Regulations create a scheme that satisfies the requirements of both these sections. In this guidance, words and phrases have the same meaning as they do in the Regulations.
- 1.3 The text of the Act is available at <http://www.legislation.gov.uk/asp/2018/12>
The text of the Regulations is also available at <http://www.legislation.gov.uk/ssi/2019/327/made>
- 1.4 Every relevant local authority should have regard to this guidance. The “relevant local authorities” are the local authorities listed in the schedule of the Act. The guidance is non-statutory but has been drafted in collaboration with the relevant local authorities.

2. Overview of process

2.1 This guidance focuses on the procedures that relevant local authorities are required to carry out and the various steps associated with an additional powers request. The flowchart below provides a high-level summary of the process.



Key: diamonds are decision points; squares are actions to be done; purple indicates local authority responsibilities; blue indicates Scottish Government responsibilities; blue arrows are yes/accept; red arrows are no/refuse; shaded areas indicate stages with timescales attached.

3. Requests for additional powers

What is an additional powers request?

3.1 An additional powers request is a scheme by which a relevant local authority can request that the Scottish Ministers promote legislation devolving a function to them, or that the Scottish Ministers transfer an additional function, duty or responsibility to them.

Who can make a request?

3.2 An additional powers request can only be made by the six relevant local authorities. Requests cannot be made by any other organisation, group or individual.

Demonstrating reasonable cause

3.3 Prior to making an additional powers request, a relevant local authority must be satisfied that it can demonstrate reasonable cause for requesting an additional power from the Scottish Ministers. There may be many factors that play into that, for example evidence of community support for the additional power, or outcomes that could be improved by the local authority exercising the additional power.

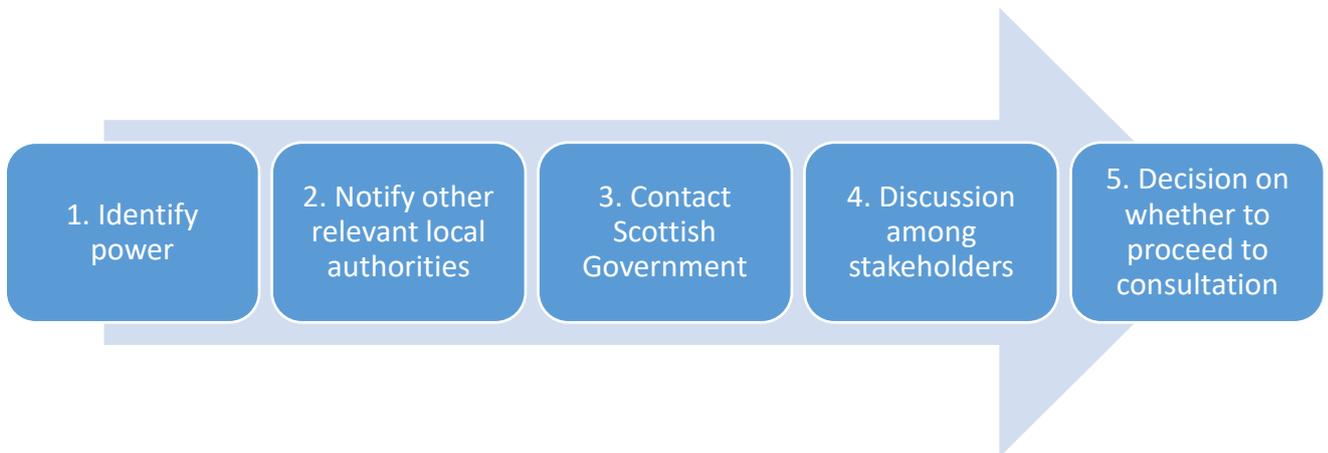
Benefits to island communities

3.4 It should also be borne in mind that these Regulations are made under the Act, the purpose of which is to support and help meet unique needs of Scotland’s islands. An additional power must therefore benefit island communities. Local authorities who have mainland and island residents will want to be particularly mindful of this when considering the merits of making an additional powers request.

4. Pre-application stage

4.1 Local authorities are encouraged to engage in a “pre-application” stage. This stage is not obligatory but is intended to allow dialogue and discussion that would facilitate the next stage in the process to request an additional power.

4.2 A summary of the recommended steps in the pre-application stage is set out below:



Step 1 - Identify power

4.3 The local authority should identify the additional power that they may wish to request and, in doing so, consider the needs and benefits that such additional power would bring to their island communities.

Step 2 - Notify other relevant local authorities

4.4 Discussions between all the relevant local authorities should take place in order to ensure that every local authority is sighted on a proposal. Moreover, while joint applications are not provided for in the Regulations, if more than one local authority is considering requesting the same additional power there may be merit in similar applications being submitted simultaneously.

Step 3 - Contact Scottish Government

- 4.5 It is recommended that the local authority contact Scottish Government officials to alert them to their interest in potentially submitting an additional powers request and the nature of it.

Step 4 - Discussion among stakeholders

- 4.6 It is encouraged that a discussion be arranged between the local authority, Scottish Government officials and any other appropriate stakeholders to consider issues such as legislative competence, practicalities, financial impacts and any relevant impact assessments. This discussion will provide an opportunity to identify steps necessary to resolve any issues and it may also save time and discussion at a later stage.

Step 5 - Decision on whether to proceed to consultation

- 4.7 Finally, if the local authority is minded to proceed to make a formal request, before doing so they must carry out a consultation, more detail on which is in section 5.

5. Consultation

- 5.1 The Regulations contain certain requirements that must be followed by a local authority in consulting on the proposed additional powers request. It is essential that evidence of community support is provided with any request.

Who should be consulted?

- 5.2 The Regulations specify certain consultees that must be consulted by the requesting local authority. These are set out in regulation 5(2).

How must they be consulted?

- 5.3 The requesting local authority must give consultees notice of the proposed additional power. Regulation 5(3) sets out the information that the notice must include.

Consultation period

- 5.4 The consultation period is determined by the requesting local authority but it has to be for a period of at least 12 weeks. The consultation must start on the day on which the consultees were given notice and it must run continuously.

6. Requirements for an additional powers request

- 6.1 A standard form for an additional powers request is provided on the Scottish Government website. This is intended to help a requesting local authority (the relevant local authority that makes the additional powers request) ensure it provides all the information needed for a valid request, but using this form is not mandatory. A requesting local authority can choose to make the application in any format it deems appropriate for its additional powers request.

Content of a request

- 6.2 The Regulations specify that an additional powers request must be made in writing and require that certain information be provided as set out in regulation 6(2). The standard form can be used as a check list to ensure all relevant information has been included in the request.

7. Procedure following receipt of an additional powers request

- 7.1 An additional powers request should be submitted to the Scottish Government's Local Government Policy and Relationships Team. You can contact the Scottish Government switchboard on 0300 244 4000 and they will direct you to the appropriate contacts.
- 7.2 Requests will be the responsibility of the Minister or Ministers whose portfolio is responsible for the additional power that is requested, supported by the relevant Scottish Government policy team.
- 7.3 Upon receipt of an additional powers request, a check will be carried out to ensure the request contains all the required information and documentation. If it does not, then the requesting local authority will be notified within ten working days of receipt and advised what is still required to be submitted.

Acknowledgement

- 7.4 If the Scottish Ministers are satisfied that all the information has been provided, then an acknowledgment to the requesting local authority will be provided within ten working days of a valid application being received.

Publication of documents

- 7.5 A notice containing details of an additional powers request and the supporting documentation must be published and made available for inspection online. This will be put on the Scottish Government website within ten working days of a valid application being received. A copy of the notice must also be sent to the other relevant local authorities. Regulation 9(2) outlines the information that will be included in the notice, including how representations on the request may be made.

Representations

- 7.6 In the event that the Scottish Ministers receive written representations from interested parties, a copy will be shared with the requesting local authority, which then has the opportunity to make comments to the Scottish Ministers on those representations. Copies of any representations received must also be published and made available for inspection online by the Scottish Ministers as soon as practicable following receipt.

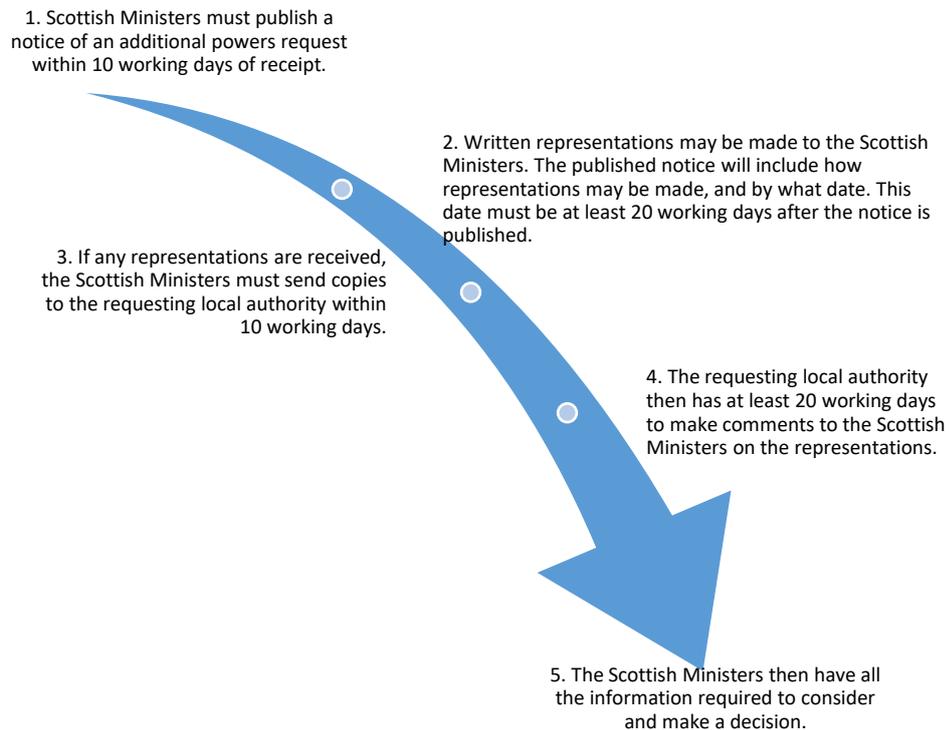
8. Decision-making process

Matters to be considered

- 8.1 The Scottish Ministers must not unreasonably refuse an additional powers request. For the avoidance of doubt, this is not a reflection on the reasonableness of the request, but on the reasonableness of the decision to refuse the request.
- 8.2 In deciding whether to give effect to or refuse the request, the Scottish Ministers must assess issues such as their legislative competence to transfer the requested additional power and, where that power is currently carried out by a public body, they will have to consider the potential impacts of it being carried out by requesting local authority for that local authority area instead. This assessment will be undertaken with support from the relevant Scottish Government policy team. A full list of the matters that the Scottish Ministers must consider is set out in regulation 12(3). Scottish Government officials will be available to answer any questions during this stage.

Making a decision

- 8.3 The Scottish Ministers must decide whether to give effect to or refuse an additional powers request. The decision must be made within six months from the validation date (the date the completed request was received), or within a longer period agreed between the Scottish Ministers and the requesting local authority. The requesting local authority will be advised of any potential delays at the earliest opportunity, and their agreement sought to an extension to the time period. At the outset, Scottish Government officials will liaise with the requesting local authority and will take forward the additional powers request as efficiently and quickly as they are able to do so.
- 8.4 The diagram below shows the indicative timeline for collating all the necessary information associated with an additional powers request in order for the Scottish Ministers to make a decision.



Giving effect to an additional powers request

8.5 In the event that Scottish Ministers decide to give effect to an additional powers request, this means that they agree to transfer the additional power, or to promote legislation devolving the additional power, as appropriate, to the requesting local authority.

Extending the additional power

8.6 Scottish Ministers also have the ability to extend the additional power to one or more of the other relevant local authorities. This is one of the reasons why this guidance encourages relevant local authorities to notify and work with each other at the pre-application stage. It will allow local authorities time to consider the implications for them and crucially establish if they agree whether the power would be also beneficial to their island communities.

8.7 There is no provision for those other local authorities to seek a review if they do not wish to have the additional power extended to them and it is, or if they wish it to be extended to them but it is not. However, a relevant local authority may make an additional powers request of their own or discuss alternative arrangements with Scottish Ministers outwith this scheme.

Decision notice

- 8.8 Having made their decision, Scottish Ministers must issue a decision notice to the requesting local authority setting out their decision and the reasons for it. A copy of the decision notice must be published online by the Scottish Ministers. The information to be provided in a decision notice is set out in regulation 14 and includes the date by which a review request must be made.

Review date

- 8.9 Where an additional powers request is refused, the requesting local authority may seek a review. The deadline for seeking a review will be notified to the requesting local authority in the decision notice. The deadline is at the Scottish Ministers' discretion but must be at least three months after the date of the decision notice. In setting the date, consideration will be given to what a reasonable timescale will be on a case by case basis.

Repeat applications

- 8.10 The Regulations do not prevent repeat applications, however there is an expectation that a repeat application will provide evidence of a material change in circumstances or significant new information.

9. Review

- 9.1 Following a decision to refuse a request, the requesting local authority may seek a review by submitting an application for review to the Scottish Ministers. Where an application is submitted, a review must be carried out. A refusal of a request made by one local authority does not prevent another relevant local authority from making the same request as circumstances may vary between local authorities.

Application for review

- 9.2 Regulation 16 specifies how a requesting local authority's application for review must be made and what it should include. They may only bring forward further matters or evidence in response to representations on the application, or if the review panel request it. A standard form for an application for review is provided on the Scottish Government website. The standard form can be used as a check list to ensure all relevant information has been included with the application for review.

Acknowledgement and notification

- 9.3 The Regulations set out the process that must be followed by the Scottish Ministers for acknowledging a review request and notifying interested parties. The acknowledgement must be sent within 20 working days of receipt of the application for review and anybody who made representations on the original additional powers request must be given notice within that same period. The specific information to be provided and relevant timescales are set out at regulation 17.

Representations

- 9.4 Interested parties can make representations in writing in respect of the review to the Scottish Ministers. A copy must be shared with the requesting local authority, which then has the opportunity to make comments to the Scottish Ministers on those representations. Copies of any representations received must also be published and made available for inspection online by the Scottish Ministers until a decision on the review has been made.

Review panel

- 9.5 Where a valid application for review has been submitted, the Scottish Ministers will appoint a review panel. The review panel will comprise three persons of which no more than one can be a civil servant working for the Scottish Government (please note this does not mean that one member must be a Scottish Government civil servant). In appointing the panel, consideration will be given to persons with the requisite skills, knowledge and experience to understand the issues associated with the additional powers request. The Scottish Ministers will seek to ensure that the panel is impartial and capable of reaching conclusions based on the evidence made available to it. Prior to the review panel members being formally announced, steps will also be taken to ensure that there are no conflicts of interest.

Further representations

- 9.6 Once the review panel has the initial evidence, any representations from interested parties and comments on those representations, the review panel may consider they have enough information to determine the review. If not, they will decide how to get more information. Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people or organisations not previously involved in the additional powers request.
- 9.7 Regulation 22 provides further information on written submissions and the rules for arranging and conducting a hearing session are outlined in the schedule of the Regulations.

Review panel reporting

- 9.8 The review panel must report to the Scottish Ministers on its findings in fact and conclusions in respect of the additional powers request, on the back of which it makes recommendations.

Decision of the review

- 9.9 Having considered the review panel's report and, if relevant, any new evidence, the Scottish Ministers will make a decision that may confirm the original decision or overturn that decision and give effect to the additional powers request. The decision must be made within six months from the application for review being made, or within a longer period agreed between the Scottish Ministers and the requesting local authority. In determining the review the Scottish Ministers must consider the review panel's report and, if relevant, any new evidence and written representations submitted. They may also decide to extend the additional power to one or more of the other relevant local authorities.

9.10 The Scottish Ministers must issue a new decision notice, which replaces the previous decision notice. The decision notice must be issued within a specified time period (unless a longer period is negotiated) and must contain certain information, as set out at regulations 26 and 27.

10. Statement of Actions

10.1 If the Scottish Ministers decide to give effect to an additional powers request, whether after the request is first determined or after a review, they must publish a statement online of the actions that they propose to take in relation to their decision. This requirement is set out in regulation 28.

11. Contact Details

11.1 Any comments, questions or suggestions about this guidance can be directed to the Local Government Policy and Relationships Team at the Scottish Government. You can contact the Scottish Government switchboard on 0300 244 4000 and they will direct you to the appropriate contacts.